In the Supreme Court of the United States

OCTOBER TERM, 1970

No. 1487

HARTZELL PROPELLER FAN COMPANY, PETITIONER

v.

NATIONAL LABOR RELATIONS BOARD

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

BRIEF FOR THE NATIONAL LABOR RELATIONS BOARD IN OPPOSITION

OPINIONS BELOW

The opinion of the court of appeals (Pet. App. 1–2) is reported at 435 F. 2d 562. The Board's decision and order (Pet. App. 21–33) are reported at 173 NLRB No. 163. The related representation decision (Pet. App. 19–21) is unreported.

JURISDICTION

The judgment of the court of appeals (Pet. App. 1–2) was entered on January 8, 1971. The petition for a writ of certiorari was filed on March 17, 1971.

421-904—71——1

The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

QUESTIONS PRESENTED

1. Whether the Board properly found that the union's offer to reduce initiation fees did not preclude employees from exercising a free choice in the Board-conducted election which the union won.

2. Whether substantial evidence supports the Board's finding that certain employees who allegedly engaged in coercive acts were not agents of the union.

STATUTES INVOLVED

The relevant provisions of the National Labor Relations Act, as amended (61 Stat. 136, 73 Stat. 519, 29 U.S.C. 151, *et seq.*), are set forth at pages 4–6 of the petition.

STATEMENT

On November 30, 1967, the Board's Regional Director conducted an election among the Company's production and maintenance employees, which the Union [1] won by a vote of 71 to 54 (Pet. App. 2). The Company filed objections to the election, which were set down for a hearing.

1. The Company contended at the hearing that the Union told "employees that if they failed to join and/or vote for [it] they would have to pay high initiation fees and be compelled to join [the Union]" (A. 342).[2] The testimony credited by the hearing

[1] International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, Teamsters Union Local 957.

[2] "A." references are to the appendix to the briefs filed in the court of appeals.

officer showed that, in the fall of 1967, the Union began a series of organizational meetings for the Company's employees. At these meetings, the Union's vice president informed the employees that its regular membership fee was $50 or $100, depending on an applicant's hourly rate, that the Union's policy was to permit newly organized employees to pay a $10 fee, and that this offer would remain open until 30 days after a bargaining agreement with the Company took effect. The Union's vice president explained further that, although the Union would like to have the employees pay the initiation fee as soon as possible, such payment was "not compulsory at the present" and they "had 30 days after [a contract] in which to have [their] money up" (Pet. App. 5–7; A. 260–264, 267, 269, 270–271). On the basis of the foregoing facts, the hearing officer concluded that the Union had made clear that the reduced fee was in effect well beyond the election, and thus that the reduction offer did not impair the employees' freedom of choice in the election (Pet. App. 6–8).[3]

2. The Company further contended that the Union had engaged in acts of intimidation and coercion in its election campaign (A. 342). Evidence was introduced of three isolated incidents. Employee Dorothy Mumford testified that, approximately one month before the election, a fellow employee, Timothy Meeds, told her that she had better sign a card and pay the $10 fee

[3] The hearing officer further concluded that, even if the Union had restricted the reduced rate to employees who signed and paid prior to the election, that would not be a basis for setting aside the election (Pet. App. 8).

or she "could get in trouble." Meeds also warned Mrs. Mumford that she could lose her job if the Union won the election, adding, "I understand you have two children" (A. 40–41, 53–55). After work that day, Mrs. Mumford found that her car doors were open and the interior soaked by rain, but she had no idea who was responsible for the incident (A. 59). Mrs. Mumford further testified that another fellow employee, Elmo Shroyer, upon learning that she had not signed a union card, said, "well, you had better or you are going to be sorry" (A. 61). Both Meeds and Shroyer denied ever having discussed the organizing campaign with Mrs. Mumford, who never signed a card (A. 316–318, 327–329).

Finally, another employee testified that Shroyer had stated that unless the employee signed a card he "would bash his head in" (A. 206–207), and that, if "I [Shroyer] can't do it by myself, I'll have Mr. Meeds help me do it" (A. 203). Shroyer denied making this threat (A. 330–331, 333–334).

The hearing officer concluded that the Union was not responsible for the above conduct as the record clearly established that the Union neither authorized nor ratified the conduct; furthermore, there was no substantial evidence to show that Meeds and Shroyer were other than rank and file employees whose actions were not attributable to the Union (Pet. App. 13–14). Finally, the hearing officer concluded that, in any event, the incidents were too isolated to create an atmosphere of fear which would make a fair election impossible (Pet. App. 14).

3. Accordingly, the hearing officer recommended that the objections be overruled in their entirety, and that the Union be certified (Pet. App. 18). The Board, finding that the Company's exceptions to the hearing officer's report raised "no substantial issues of fact or law," adopted the hearing officer's findings and recommendation, and certified the Union (Pet. App. 19–21).

Upon the Company's subsequent refusal to bargain with the Union, an unfair labor practice proceeding was initiated by the Board's General Counsel. Finding that the Company had raised no issue which had not been previously considered and rejected in the representation proceeding (Pet. App. 24–25), the Board concluded that the Company had engaged in unfair labor practices and ordered it to cease and desist from the practices by bargaining with the Union upon request (Pet. App. 30–31).

The court of appeals, one judge dissenting, sustained the Board's findings and conclusions and enforced its order (Pet. App. 1–2).

ARGUMENT

1. The Company's assertion (Pet. 9–10) that the decision below conflicts with other decisions of the Sixth Circuit which in turn conflict with a decision of the Eighth Circuit is without merit. While the Sixth Circuit has in other cases taken the position that a union's offer to waive or reduce initiation fees to those joining the union prior to an election interferes with employee free choice sufficiently to invalidate a representation election, see *National Labor*

Relations Board v. *Gafner Automotive & Machine, Inc.*, 400 F. 2d 10 (C.A. 6), and *National Labor Relations Board* v. *Gilmore Industries, Inc.*, 341 F. 2d 240 (C.A. 6), and the Eighth Circuit has taken a somewhat less stringent view of such union offers, see *National Labor Relations Board* v. *DIT-MCO, Inc.*, 428 F. 2d 775, 778–779 (C.A. 8), that conflict is not presented here. In this case, the Union's offer to reduce initiation fees was not limited to those signing up prior to the election, but was represented to be open to all for 30 days after a contract was entered into between the Union and the Company. There thus being no discrimination between those joining the Union before and after the election, the offer was not coercive under the decisions of either the Sixth or Eighth Circuits.

2. Nor is there substance to the Company's further contention (Pet. 13–15) that the Board failed to abide by Section 2(13) of the National Labor Relations Act [4] in concluding that the employees who engaged in the allegedly coercive conduct were not agents of the Union. The detailed report of the hearing officer (Pet. App. 8–16), adopted by the Board, shows that the full range of circumstances surrounding the alleged conduct was considered and that the hearing officer's finding that no agency relationship

[4] Section 2(13), 29 U.S.C. 152(13), provides:

"In determining whether any person is acting as an 'agent' of another person so as to make such other person responsible for his acts, the question of whether the specific acts performed were actually authorized or subsequently ratified shall not be controlling."

existed between the accused employees and the Union was not based solely on a finding that the Union had neither authorized nor ratified the challenged conduct. In any event, the record supports the hearing officer's alternate conclusion that the alleged incidents, even if perpetrated with Union approval, were too isolated to affect the fairness of the election.

CONCLUSION

For the foregoing reasons, the petition for a writ of certiorari should be denied.

Respectfully submitted.

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APRIL 1971.

U.S. GOVERNMENT PRINTING OFFICE: 1971